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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,348	03/09/2004	Jacques Veillon	1033-04	1980

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IP GROUP OF DLA PIPER RUDNICK GRAY CARY US LLP  
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EXAMINER

KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/796,348

Applicant(s)

VEILLON, JACQUES

Examiner

Sarah L. Kuhns

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 31-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

Claim 34 recites the limitation "the cylindrical portion." There is insufficient antecedent basis for this limitation in the claim. It is possible that this claim was meant to depend from claim 32 rather than claim 33 in which case there would be sufficient antecedent basis.

***Claim Rejections - 35 USC § 102***

Claims 31-37, 41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Kovac, U.S. Patent 3,862,614.

In regard to claim 31, Kovac discloses a preservation device comprising an envelope (10), and a multiplicity of protruding tabs extending from the envelope (26 and the corners of 10, see column 3, lines 4-8), at least one of the protruding tabs having a greater length than others of the tabs (corners of 10 have greater length than 26). It is noted that the claim requires that the longer tab can have one end thereof introduced between the envelope and a container over which the device is placed to form a passage between an interior of the container and the exterior of the envelope to allow steam to be evacuated during heating of the container. However, this limitation is merely a recitation of the

Art Unit: 1761

intended use of the claimed invention, which must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, as appears to be the case here, then it meets the claim.

In regard to claim 32, Kovac discloses the envelope comprising an essentially circular planar surface (12) at an end of which extends substantially perpendicularly of an essentially cylindrical portion (14).

In regard to claim 33, Kovac discloses the protruding tabs (26 and corners of 10) extending in a plane parallel to a plane defined by the planar surface of the envelope (see figure 10).

In regard to claim 34, Kovac discloses the protruding tabs (26 and corners of 10) being located essentially at ends of the cylindrical portion (see figure 10).

In regard to claim 35, Kovac discloses the protruding tabs are arranged in pairs opposite each other (26 and corners of 10, see figure 10).

In regard to claims 36 and 37, Kovac discloses the envelope being made from a stretchable plastic sheet material (column 2, lines 8-13).

In regard to claims 41 and 42, Kovac discloses the essentially cylindrical portion further comprising a multiplicity of elastic elements capable of ensuring airtightness of the envelope.

Claims 31, 33 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Mosimann, WO 96/11858. The abstract has been relied upon in

Art Unit: 1761

making this rejection. A full translation has been requested and will be forwarded to Applicant when received.

In regard to claim 31, Mosimann discloses a preservation device comprising an envelope (1), and a multiplicity of protruding tabs extending from the envelope (2, 3, 4, 6), at least one of the protruding tabs having a greater length than others of the tabs (3). It is noted that the claim requires that the longer tab can have one end thereof introduced between the envelope and a container over which the device is placed to form a passage between an interior of the container and the exterior of the envelope to allow steam to be evacuated during heating of the container. However, this limitation is merely a recitation of the intended use of the claimed invention, which must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, as appears to be the case here, then it meets the claim.

In regard to claim 33, Mosimann discloses the protruding tabs (2, 3, 4, 6) extending in a plane parallel to a plane defined by the planar surface of the envelope (see figure 1).

In regard to claim 35, Mosimann discloses the protruding tabs are arranged in pairs opposite each other (4 and 6).

***Claim Rejections - 35 USC § 103***

Claims 38-40 and 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kovac, as applied above, in further view of Terauds, Re. 32,739.

In regard to claims 38, 39, 43-45, 47 and 48, Kovac does not disclose the cylindrical portion of the envelope being in fluted form. However, it was known in the food packaging art to provide covers that were corrugated or fluted, to prevent crushing of the cover during storage, as evidenced by Terauds (column 5, lines 43-50). Therefore, it would have been obvious to make the cylindrical portion of the envelope of Kovac in fluted form in order to increase the strength and durability of the preservation device.

In regard to claims 40 and 46, Kovac does not disclose the thicknesses of the cylindrical portion and the planar surface, but the disclosure seems to suggest that the cylindrical portion is thicker than the planar surface which is described as a relatively thin film-like sheet material (column 2, lines 4-13). However, it would have been obvious to use a thickness in the range claimed in order to provide a cover that would not easily break or puncture, while at the same time minimizing costs by using the smallest amount of material to do so.

***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK



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